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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/590,760
Filing Date: June 08, 2000
Appellant(s): LOWERY ET AL.

Charles S. Fish
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 14, 2007 appealing from the Office action mailed June 26, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,748,385	RODKIN ET AL	6-2004
6,038,601	LAMBERT ET AL	3-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1-8, 10-16 and 18-29 are pending examination.
2. **Claims 1-8, 10-16 and 18-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Rodkin et al* (USPN 6,748,385) in view of *Lambert et al* (USPN 6,038,601). This rejection was set forth in the previous Office action mailed June 26, 2006.**
3. Per claim 24, *Rodkin et al* teach a method for providing efficient data access service comprising: subscribing an origin server to a data center (Abstract, col.4 lines 5-43, col.13 lines 10-15); routing a data request from a browser to the data center, the data request requesting a dynamic content item and having an associated address indicating the origin server (col.4 lines 44-53, col.13 lines 15-67); receiving at a data center manager, before expiration of the dynamic content item, a data change message from a trigger associated with the dynamic content item, the data change message generated in response to a change in the content of the dynamic content item (col.11 lines 35-41, col.19 lines 1-18, col.21 lines 7-14, col.23 lines 8-43); generating an expiration command at the data center manager in response to the data change message (col.22 lines 7-45); receiving the expiration command from the data center manager (col.21 lines 7-14, col.22 lines 32-34); updating an expiration time of the dynamic content item in accordance with the expiration command (col.22 lines 32-41 and 57-64); determining whether the dynamic content item is available at the data center according to the expiration time of the dynamic content item (col.21 lines 7-31, col.22 lines 58-63, col.23 lines 8-36).

Yet *Rodkin et al* fail to explicitly teach specific use of a browser in addition to: generating the dynamic content item at the origin server when the dynamic content is unavailable at the data center; retrieving the dynamic content item from the origin server when the content

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item is unavailable at the data center; and communicating the dynamic content to the browser. However, *Lambert et al* disclose retrieving content from the source machine when it is unavailable in the cache server and communicating the content via a web browser (col.5 lines 40-60, col.6 lines 45-55, col.7 lines 45-60, col.8 lines 45-56, col.23 line 63-col.24 line 14 and col.32 lines 3-26).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of *Rodkin et al* and *Lambert et al* for the purpose of generating expiration indications pertaining to the content while provisioning retrieval of the content from the source when the content at the server is either unavailable or not up-to-date and implementing usage of a browser for communicating the requests and content in the system; because it provides a modification to the data access services of the system by allowing for access to the original source when the content of a server is unavailable.

4. Claims 1 and 27 contain limitations that are substantially equivalent to claim 24 and are therefore rejected under the same basis.

5. Per claim 2, *Rodkin et al* and *Lambert et al* teach the method for processing data according to Claim 1, *Lambert et al* further teach the method further comprising: receiving a data request at the cache server from a remote computer, the data request requesting data from the cache server; determining whether the requested data is available at the cache server; retrieving the requested data from an origin server when the requested data is unavailable; and communicating the requested data from the cache server to the remote computer (col.5 lines 40-60 and col.32 lines 3-26).

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6. Per claim 3, *Lambert et al* teach the method for processing data according to Claim 2 wherein the data comprises a web page and further comprising generating the web page at an origin server (col.1 lines 16-20 and col.5 line 40-col.6 line 5).

7. Per claim 4, *Lambert et al* teach the method for processing data according to Claim 3, wherein generating the web page comprises generating the web page based on the data request (col. 1 lines 16-20 and 27-31).

8. Per claim 5, *Lambert et al* teach the method for processing data according to Claim 2, wherein determining whether the requested data is available comprises: determining whether the requested data is present at the cache server; and determining whether the requested data is current when the requested data is present at the cache server (col.5 lines 56-60 and col.12 lines 49-55).

9. Per claim 10, *Rodkin et al* and *Lambert et al* teach the method for processing data according to Claim 1, *Rodkin et al* further teach the method further comprising generating the expiration command at the data center manager in response to the elapsing of a predetermined period of time (col.14 lines 3-10, col.21 lines 7-31, col.22 lines 18-31; *Lambert et al*: col.12 lines 50-52).

10. Per claim 11, *Rodkin et al* and *Lambert et al* teach the method for processing data according to Claim 1, *Rodkin et al* further teach the method wherein generating the expiration command comprises: detecting a change in the content of the data associated with the origin server by a trigger associated with the data; generating a data change command indicating at least one changed item of content; and communicating the data change command to the data

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center manager (col.11 lines 35-49, col.13 line 46-col.14 line 34, col.21 lines 7-31, col.22 lines 7-45; *Lambert et al*: col. 7 lines 55-58 and col.32 lines 12-18).

11. Per claim 12, *Rodkin et al* and *Lambert et al* teach the method for processing data according to Claim 1, *Rodkin et al* further teach the method wherein marking the data as expired comprises receiving the expiration command from the data center manager and determining the data to expire as a function of the expiration command (col.21 lines 7-31, col.22 lines 7-63; *Lambert et al*: col.7 lines 52-58).

12. Per claim 13, *Rodkin et al* and *Lambert et al* teach the method for processing data according to Claim 12, *Rodkin et al* further teach the method wherein the expiration command expires a single web page (col.21 lines 7-31, col.22 lines 24-34; *Lambert et al*: col.12 lines 50-52).

13. Per claim 14, *Rodkin et al* and *Lambert et al* teach the method for processing data according to Claim 12, *Rodkin et al* further teach the method wherein the expiration command expires a plurality of web pages (col.22 lines 46-63 col.24 lines 4-12; *Lambert et al*: col. 7 lines 52-58).

14. Claims 15 and 16 are substantially similar to claim 14 and are therefore rejected under the same basis.

15. Per claim 18, *Rodkin et al* and *Lambert et al* teach the method for processing data according to Claim 1, *Rodkin et al* further teach the method wherein the data comprises a web page using the hypertext markup language (col.11 lines 10-27, col.16 line 34-col.17 line 15; *Lambert et al*: col.1 lines 16-20).

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16. Per claim 19, *Rodkin et al* and *Lambert et al* teach the method for processing data according to Claim 1, *Lambert et al* further teach the method wherein the expiration command comprises an Internet Cache Synchronization Protocol command (col.8 lines 31-35 and 53-56; *Rodkin et al*: col.19 lines 14-18).

17. Per claim 20, *Rodkin et al* and *Lambert et al* teach the method for processing data according to Claim 19, *Lambert et al* further teach the method wherein the expiration command comprises an Internet Cache Synchronization Protocol terse command and further including generating the expiration command at the data center manager in response to an Internet Cache Synchronization Protocol verbose command (col.7 lines 53-58, col. 8 lines 31-35 and 53-56; col.19 lines 14-18, col.21 lines 7-31, col.22 lines 58-64).

18. Per claim 21, *Rodkin et al* and *Lambert et al* teach the method for processing data according to Claim 1, *Lambert et al* further teach the method wherein the data has an associated request element identifying the data, the request element having a first portion and a second portion distinct from the first portion and wherein receiving data at the cache server comprises: filtering the first portion of the request element based on predetermined criteria associated with an origin server associated with the data; and identifying the data based on the second portion of the request element (col.5 lines 51-60).

19. Per claim 22, *Lambert et al* teach the method for processing data according to Claim 21 further comprising: receiving a request at the cache server, a first portion of the request being distinct from the first portion of the request element and a second portion of the request being substantially similar to the second portion of the request element; and retrieving the data as a

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function of the second portion of the request and the second portion of the request element (col. 5 lines 51-60).

20. Per claim 23, *Lambert et al* teach the method for processing data according to Claim 22, wherein the request element comprises a uniform resource locator and the request comprises a uniform resource locator (col.9 lines 59-60; *Rodkin et al*: col.22 lines 10-45).

21. Per claim 25, *Rodkin et al* and *Lambert et al* teach the method for providing efficient data access service according to Claim 24, *Lambert et al* further teach the method wherein subscribing the origin server comprises transferring domain name resolution service to the data center and wherein routing the data request comprises resolving the address associated with the origin server (col.4 lines 17-19 and 30-34 and col.23 line 67-col. 24 line 1).

22. Per claim 26, *Rodkin et al* and *Lambert et al* teach the method for providing efficient data access service according to Claim 24, *Lambert et al* further teach the method wherein determining whether the dynamic content item is available comprises: determining whether the dynamic content item is present at the data center; and determining whether the dynamic content item is current when the content item is present at the data center (col.5 lines 56-60 and col.12 lines 49-55).

23. Per claim 28, *Rodkin et al* and *Lambert et al* teach the system for processing data according to Claim 27, *Rodkin et al* further teach the system wherein the data center comprises a web server and a cache server and a flow control server (Figure 4, col.13 lines 11-55, col.21 lines 7-14; *Lambert et al*: col.5 lines 9-60).

24. Claims 6, 7 and 29 are substantially similar to claim 28 and are therefore rejected under the same basis.

25. Per claim 8, *Rodkin et al* and *Lambert et al* teach the method for processing data according to Claim 7, *Rodkin et al* further teach the method wherein determining whether to grant permission comprises: granting permission to the cache server when the current load is below a predetermined threshold; and denying permission to the cache server when the current load exceeds the predetermined threshold (col.21 lines 3-6 and 32-40, col.22 lines 58-64).

(10) Response to Argument

A. Appellant argues that there is no suggestion or motivation in the *Rodkin et al* patent or in the *Lambert et al* patent to combine them as proposed by the Examiner (see Appeal Brief pages 7-8).

In response to argument A, Examiner directs Appellant's attention to the KSR decision that forecloses the argument that a specific teaching, suggestion, or motivation is required to support a finding of obviousness. See the recent Board decision *Ex parte Smith*, --USPQ2d--, slip op. at 20, (Bd. Pat. App. & Interf. June 25, 2007) (citing *KSR*, 82 USPQ2d at 1396, available at <http://www.uspto.gov/web/offices/dcom/bpai/prec/fd071925.pdf>).

In response to Appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, *Lambert et al* supplements the caching system of *Rodkin et al* by resolving a cache

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misses—wherein if a caching server does not have the content requested by a client, then the content is retrieved from the original provider of the content. To one of ordinary skill in the art, this is a feature common to caching system for establishing efficient content retrieval.

B. Appellant argues that the Examiner used “improper hindsight reconstruction of the claimed invention” for combining the *Rodkin et al* and *Lambert et al* references (see Appeal Brief page 8).

In response to argument B, Examiner respectfully disagrees. It must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the appellant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

From the disclosures offered by the *Rodkin et al* and *Lambert et al* references, it is clearly evident that Appellant's claimed invention is not the first or only to address caching content, processing content changes and generating content expiration data. As stated in the previous Office Action (June 26, 2006; Final Office Action, page 5):

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of *Rodkin et al* and *Lambert et al* for the purpose of generating expiration indications pertaining to the content while provisioning retrieval of the content from the source when the content at the server is either unavailable or not up-to-date and implementing usage of a browser for communicating the requests and content in the system; because it provides a modification to the data access services of the system by allowing for access to the original source when the content of a server is unavailable.

Examiner's motivation for combining the cited references is based on the knowledge generally available to one of ordinary skill in the art. The technique of caching content at a particular server, and then retrieving the content from the original source when the particular server is

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unavailable is well-known in the art. Furthermore, using expiration times for indicating the lifetime or age of content is also well-known to one of ordinary skill in the art. Both of these features are taught and made obvious by the combination of *Rodkin et al* in view of *Lambert et al*, thereby producing a predictable result of resolving cache-misses and keeping content up-to-date.

C. Appellant argues that “a reasonable expectation of success” for combining the *Rodkin et al* and *Lambert et al* references has not been shown by the Examiner since the combination “would not be capable of performing the operation required by the claimed invention” (see Appeal Brief page 8).

In response to argument C, Examiner respectfully disagrees. As stated in the Examiner's response to argument B, the features taught and suggested by the combination of *Rodkin et al* in view of *Lambert et al* produce a predictable result that renders Appellant's invention obvious to one of ordinary skill in the art. *Rodkin et al*'s failure to explicitly teach specific use of a browser in addition to: generating the dynamic content item at the origin server when the dynamic content is unavailable at the data center; retrieving the dynamic content item from the origin server when the content item is unavailable at the data center; and communicating the dynamic content to the browser, is remedied and achieved by *Lambert et al*'s teaching of retrieving content from the source device when it is unavailable at the cache server and subsequently communicating the content via a web browser (*col.5 lines 40-60, col.6 lines 45-55, col.7 lines 45-60, col.8 lines 45-56, col.23 line 63-col.24 line 14 and col.32 lines 3-26*). The combination of these teachings is permissible in producing an expected and reasonable result, for accomplishing the expected and commonly understood benefit of resolving a cache-miss by allowing for the

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retrieval of content from the source when the content at the cache server is either unavailable or not up-to-date and for displaying/communicating content via a browser.

D. Appellant argues—with respect to claims 1, 24 and 27—that *Rodkin et al* has “no capability to identify whether the data content of the text files have been changed” and therefore is “not capable of generating a data change message in response to any content change” (see Appeal Brief page 9).

In response to argument D, Examiner respectfully disagrees. As stated in the previous Office Action (June 26, 2006; Final Office Action, pages 2-3):

In response to Applicant's argument that the reference fails to show certain features of Applicant's invention, it is noted that the feature upon which Applicant relies (i.e., identifying whether the content of the text files have been changed) is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). However, claim 5 comprises the feature of, “determining whether the requested data is current...” for which *Rodkin et al* in view of *Lambert et al* (6,038,601) is used to teach the claimed limitation. In particular, *Lambert et al* teach checking the content at the origin site to see if the content has changed (*col.12 lines 50-54*), where upon expiration of the content, the content owner is contacted to determine if the content has changed—the content owner's response is an indication that the content has been changed (*col.7 lines 45-60*). Applicant's arguments are therefore non-persuasive and the rejections under *Rodkin et al* in view of *Lambert et al* are maintained.

Appellant's arguments for the above feature of the “data content of the text files” is not a feature cited in the claim nor is it necessarily equivalent to the claim language of the “content of the dynamic content item”. Nonetheless, the teachings of the cited prior art are fully capable of generating a data change message in response to any content change. In particular, *Rodkin et al* teach that when destination preferences change, “the new preferences can be entered at the central server, and all of the links at the various content servers will be automatically updated” (*col.23 lines 9-19 and 54-62*) in addition to querying databases for fresh data, finding a fresh destination address then transmitting the fresh destination address and expiration date data (*col.13 line 46-col.14 line 9, col.19 lines 1-18, col.22 lines 8-31, col.24 lines 9-31*). Furthermore, *Lambert et al* teach checking the content at the origin site to see if the content has changed

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(*col.12 lines 50-54*), wherein upon expiration of the content, the content owner is contacted to determine if the content has changed; therefore, the content owner's response is an indication that the content has been changed (*col.7 lines 45-60*). Thus, it is clearly evident that the teachings and embodiments of the cited prior art are capable of accomplishing Appellant's inventive scope.

E. Appellant argues—with respect to claims 1, 24 and 27—that *Rodkin et al* and *Lambert et al* fail to “provide an ability to generate an expiration command at the data center manager in response to the data change message since there is no data change message generated or any ability to identify a change in the content of data” (see Appeal Brief page 10).

In response to argument E, Examiner respectfully disagrees. As established in the Examiner's response to argument D, *Rodkin et al* and *Lambert et al* are both capable of identifying when content has been changed. More specifically, *Rodkin et al* disclose an expiration database maintained at the central server, where the central server determines and calculates expiration dates for each destination and updates each content server with particular content at fixed or varying intervals (*col.11 lines 35-50, col.22 lines 32-34 and 58-64, col.23 lines 29-42*); while *Lambert et al* teach a caching server that assigns an expiration data to each piece of content (*col.12 lines 49-50*) and content providers that set expiration dates for the meta-data list of content, wherein the content listed in the TOC also receives the TOC's expiration date (*col.13 lines 8-45*). Thus, it is clearly evident that *Rodkin et al* and *Lambert et al* both provision generating expiration dates in order to signify when the data is old and should be updated, which is sufficient in achieving the functionality and scope of the claimed limitations.


For the above reasons, it is believed that the rejections should be sustained.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the Examiner in the Related Appeals and Interferences section of this Examiner's Answer.

Respectfully submitted,


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